

In re) Fair Hearing No. H-04/10-196
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 Appeal of)

The petitioner appeals the decision by the Department of Disabilities, Aging and Independent Living (DAIL) reducing the number of hours of services for her under the Attendant Care Services Program (ASP). The issue is whether the amount of "secondary services" the petitioner has requested is in excess of the maximum allowable under the regulations.

FINDINGS OF FACT

1. The petitioner lives in a rural area in eastern Vermont and receives in-home attendant care services. In 2009 she was approved for 5.5 hours a day of services. For 2010, the petitioner requested 5 hours a day of services, but the Department granted only 4 hours a day. This appeal followed.

2. The Department's regulations (see *infra*) define attendant care services as either "primary" or "secondary". Primary services are for "personal maintenance and mobility"; secondary services are for assistance with activities like housekeeping, shopping, and transportation. In 2009, the petitioner received slightly more than 2.6 hours a day in primary services, and slightly less than 2.9 hours a day in secondary services. In her 2010 request for services she again asked for roughly 2.6 hours a day in primary services, but requested only 2.4 hours a day in secondary services.

3. For 2010 the Department granted the petitioner's request for 2.6 hours/day of primary services. However, it reduced the amount of secondary services to 1.4 hours/day for secondary services. The sole basis of the Department's decision, and the issue in this case, is the Department's interpretation of a provision in the regulations (*infra*) limiting the amount of secondary services to a maximum of 50 percent of services.

4. The Department maintains that in 2009 (and possibly in previous years as well) it "erroneously" awarded the petitioner secondary services that were in excess of 50 percent of the time granted for her primary services. For 2010, the Department maintains that based on its regulations

it has awarded the petitioner all the primary services she requested and the highest amount of allowable secondary services. Obviously, this has resulted in an overall reduction in services for the petitioner of 1.5 hours a day from what she received in 2009, and is an hour a day less than what she requested in 2010.

5. The petitioner maintains, and the Department does not dispute, that in addition to household chores and maintenance she needs significant time for transportation because her home is at a significant distance to shopping and medical services.

ORDER

The Department's decision is reversed.

REASONS

Section 107 of the Attendant Services Program Regulations provides as follows

Program funds are available to pay for assistance with "Primary services". Program funds are also available to pay for assistance with "Secondary services" if they occupy no more than half the time for which services are paid. Assistance with secondary services shall be limited to a maximum of 50% of the total award.

It appears that the Department is simply misreading or misapplying this regulation. By its clear terms it limits

the time allowed for secondary services to 50 percent of *total* services. Nowhere does the regulation state or imply that secondary services must be limited to 50 percent of the time allotted for *primary* services.

The amount of hours the petitioner has requested for secondary services (2.4 hours a day) is clearly less than half the 5 hours of *total* services she requested.

"Transportation" is specifically included in the regulations as a defined "secondary service" (§ 103[q][4]) and, as noted above, the Department does not dispute the amount of time the petitioner requires and has requested for secondary services (see Commissioner's Decision dated March 8, 2010).

It must, therefore, be concluded that the petitioner's request for 5 hours a day of services, 2.6 hours a day for primary services and 2.4 hours a day for secondary services, clearly fits the above regulation. Accordingly, the Department's decision in this case must be reversed. 3

V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D

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